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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/593,914	06/14/2000	Jens J. Hyldig-Nielsen	BP9901US	8319

23544 7590 09/29/2003

BRIAN D. GILDEA
APPLIED BIOSYSTEMS
15 DEANGELO DRIVE
BEDFORD, MA 01730

EXAMINER

MYERS, CARLA J

ART UNIT

PAPER NUMBER

1634

DATE MAILED: 09/29/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action	Application No. 09/593,914	Applicant(s) HYLDIG-NIELSEN ET AL.	
	Examiner Carla Myers	Art Unit 1634	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 25 August 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 6 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 22 August 2003. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:


Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: _____.

Claim(s) withdrawn from consideration: _____.

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☒ Other: See Continuation Sheet


 CARLA J. MYERS
 PRIMARY EXAMINER

Continuation of 5. does NOT place the application in condition for allowance because: As indicated below in box 10, the 132 Declaration filed after the final rejection will not be entered and has not been considered. Applicants arguments based on this Declaration have also not been considered. Regarding Applicants additional arguments, in summary: The claims have not been rejected over the teachings of Amann. Nonetheless, it is pointed out that the Amann 1992 reference (page 3010) states that: "We are continuing to evaluate alternative approaches to permeabilize whole fixed cells. Although we are optimistic that methods can be tailored for single strains under investigation, we do not expect to find a universal method that will permeabilize the whole array of different microorganisms to a comparable degree. This means that general probes (e.g., for the three domains) should not be used as enzyme derivatives for the characterization of environmental samples because they will likely produce biased results. Nevertheless, highly specific enzyme-probe conjugates used in combination with suitable methods to permeabilize specific cells of interest should provide a valuable tool for the detection and identification of individual cells in situ." It is maintained that Amann does not teach that it would not be possible to use enzyme-labeled probes for in situ hybridization methods in yeasts. Rather, Amann teaches that the conditions of permeabilization must be optimized in order to allow one to use enzyme-labeled probes in in situ hybridization methods in yeast cells. There are no teachings within the references used in the 103 rejections, particularly the Stender 1998 reference, which would indicate that the in situ hybridization method could not be performed in yeast cells using enzyme-linked probes. Furthermore, the recitation in the claims of in-situ hybridization probes does not distinguish the claimed probes over the probes taught by Kosse and DeWachter. Additionally, claims 10-12, 16, 18-19, 21-26, 29, 32, 61-62, 86 and 87 are not limited to only in situ hybridization probes and methods of in situ hybridization. Applicants arguments regarding the fact that the 3' end of the 18S rRNA are not accessible to in situ hybridization do not apply to the statements made in the rejection. Again, the claims referred to are not limited to in situ hybridization probes and Applicants have provided no evidence to show that the 18S rRNA cannot be used in other types of hybridization methods, such as dot blot hybridization. It is maintained that the use of the full length 18S rRNA as a probe is well known and conventional in the art.

Continuation of 10. Other: The 132 Declaration has not been entered and will not be considered because it raises new issues and is not timely filed, see MPEP 716.01. Applicants have not provided a showing of good and sufficient reasons as to why the declaration was not presented earlier..